IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1315 of 1997

in

SPECIAL CIVIL APPLICATION No 7424 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER
and
MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 YES 2 TO 5 NO.

GUJARAT STATE CIVIL SUPPLIES CORPORATION LTD

Versus

ALL INDIA FOOD AND ALLIED WORKERS UNION

Appearance:
MR VB PATEL instructed by DEEPAK V PATEL
for appellant.
MRS DT SHAH for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MISS JUSTICE R.M.DOSHIT
Date of decision: 17/10/97

ORAL JUDGEMENT

Admitted. Ms. D.T.Shah, learned counsel for the respondent No.1 and Mr. Bambhania, learned AGP for Respondent No.2 appear and waive service of notice of admission. In the facts and circumstances of the case, appeal is taken up for final hearing today.

This appeal is filed against an interim order passed by the learned Single Judge in Special Civil Application No. 7424 of 1997 on October 10, 1997. That petition was filed by respondent No.1. It is admitted, Rule is issued and is pending for final hearing. On interim relief, the learned Single Judge, after hearing the parties, passed an order which is impugned in this Letters Patent Appeal. By the said order, the learned Single Judge granted mandatory relief directing the appellant to permit employees mentioned at pages 24 and 25 of the petition, to take on duty "forthwith".

We have heard Mr. V.B.Patel, instructed by Mr. Dipak Patel for the appellant, Ms. D.T.Shah, learned counsel for respondent No.1 and Mr. Bambhania, learned AGP for respondent No.2.

The question raised in the present Letters Patent Appeal is as to whether in the facts and circumstances of the case, learned Single Judge was right in granting relief of a mandatory nature and in directing the Corporation to permit the employees to resume duties. It is not disputed that the proceedings are pending before the Labour Court. Reference No. 11 of 1992 relates to regularisation of service of employees employed by the appellant-Corporation. They claim permanent status and consequential benefits on that basis. It was the case of the petitioner that during the pendency of proceedings employees apprehended termination. Hence, they filed a complaint IT No. 3 of 1996. They prayed for interim relief against termination. The Tribunal by an order dated October 18, 1996, granted interim relief in terms of paragraph 10 (B) of the application. Notice was also issued to the Corporation as to why ad-interim relief should not be made interim relief. An application Ex.14 was also filed for mandatory relief, as according to the employees, the order passed by the Tribunal was not complied with. The appellant objected to grant of such relief. After hearing the parties, the Tribunal by an order dated September 20, 1997, rejected the application filed by employees and vacated ex-parte ad-interim relief granted earlier. That order was made subject matter of challenge in the petition.

To recall, the petition was admitted and the learned Single Judge was pleased to grant mandatory relief, which is challenged in this appeal.

Mr. V.B.Patel, learned Senior Counsel raised various contentions. He contended that an application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was not maintainable. He submitted that even if such an application is maintainable, ipso-facto relief of resumption of duty can not be granted without affording opportunity to the employer so as to enable him to justify action taken by the the Corporation. Mr. Patel stated that according to appellant, there was no termination and/or apprehended termination of services of employes. The employees were not willing to come for duty and though they were asked to remain present to discharge duties, on their own volition, they had not attended to work. It was urged that when the proceedings were pending before the Industrial Tribunal and even petition was pending before the learned Single Judge, no relief of a mandatory nature at interim stage ought to have been granted which would virtually finally dispose of the petition. It was submitted that though a finding of fact was recorded by the Tribunal while disposing of application filed by the employes and vacating ad interim relief that there was no prima-facie case in favour of employees and balance of convenience was in favour of the Corporation rather than in favour of the employees, interim relief was granted by the learned Single Judge. It was straneously urged that those findings were not interfered with by the learned Single Judge and hence no mandatory relief at interlocutory stage ought to have been granted. Finally, it was submitted that though an order passed by the Tribunal may be subject to judicial scrutiny under Article 226 and/or 227 of the Constitution the High Court exercising jurisdiction would not act as court of appeal and at interlocutory stage, such order could not have been passed. On all these grounds, the order passed by the learned Single Judge requires interference.

Ms. Shah on the other hand supported the order passed by the learned Single Judge. She submitted that ad interim relief was granted by the Tribunal, which was not complied with. The said fact rightly weighed with the learned Single Judge. When ad-interim order was not complied with, the employees were constrained to file application to grant mandatory relief. Had the said order passed in accordance with law complied with by the Corporation, there was no necessity for employees to file

further application. By rejecting the application for mandatory relief, an error of law and jurisdiction was committed by the Tribunal, which was rightly corrected by the learned Single Judge. She further submitted that though the order was passed at interlocutory stage, the learned Single Judge was satisfied in the facts and circumstances to grant such relief. She stated that she was ready to go on with final hearing of the matter, but the Corporation sought time. Thereafter, after hearing the parties, the court was satisfied that in spite of just claim on the part of the employees, the Tribunal had not protected the employees that an order was passed. She submitted that it is not true that the employees were not ready to work, but they were not allowed to work. Regarding application under Section 33-A of the Act, Ms. Shah submitted that in the instant case the provisions of Section 33-A of the Act would not apply. Considering all the attendant circumstances the learned Single Judge has passed the order having satisfied not only of prima-facie case, but that balance of convenience was also in favour of employees. She stated that even today, employees are ready to resume duty, but the Corporation is objecting to it. She, therefore, submitted that there is no substance in appeal and it should be dismissed.

In the facts and circumstances of the case, in our opinion, the appeal deserves to be allowed . Reference is pending before the Tribunal. During pendency of Reference, apprehending termination, a complaint was made. Since the matter is pending before the Tribunal, we do not express any opinion on it. We also do not express opinion as to whether or not an application under Section 33-A of the Act is maintainable. However, in our view, even if an application is maintainable, mandatory relief of reinstatement ought not to have been granted by the learned Single Judge. Moreover, when that application came up for hearing, the Tribunal rejected it and ad interim relief granted earlier also was vacated. The learned Single Judge at the stage of issuing Rule ought not to have granted relief of a mandatory nature, which is more or less final relief as virtually at that stage, the petition came to be allowed.

Ms. Shah stated that the contention of employees remaining absent was not taken before the learned Single Judge and for the first time the point is taken before a Division Bench by the Corporation. According to the appellant, even after earlier order granting ex-parte ad-interim relief, employees had not reported for duty,

whereas, according to the employees, it was the employer who had not allowed them to work.

In our opinion, all questions can be decided in appropriate proceedingsin Labour Court and/or before the learned Single Judge. In our opinion, the learned Single Judge has committed an error of law and of jurisdiction in granting the relief of a mandatory nature at this stage. Hence, it deserves to be interfered with.

For the foregoing reasons, we are of the view that the order passed by the learned Single Judge deserves to be set aside and is accordingly set aside. Interim relief is hereby vacated. In the facts and circumstances of the case, there is no order as to costs.

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JOSHI